

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Wolfgang Sauerman)
Map 129-11-0-A, Parcel 311.00CO) Davidson County
Map 116-16-0-B, Parcel 36.00CO)
Map 104-11-0-A, Parcel 44.00CO)
Residential Property)
Tax Year 2005)

INITIAL DECISION AND ORDER DISMISSED APPEAL

Statement of the Case

For the purposes of writing this opinion, I have consolidated these cases. For a list of the property descriptions and values, see the attached exhibit.

An appeal has been filed on January 25, 2006 on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated, §§ 67-5-1412, 67-5-1501 and 67-5-1505. A jurisdictional hearing was conducted on May 11, 2006 at the Davidson County Property Assessor's Office. Present at the hearing were Wolfgang Sauerman, the taxpayer who represented himself and Tommy Roberson from the Metro Property Assessor's Office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located in Nashville, Tennessee.

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(b)(2) & 67-5-1412(e). Nevertheless, the legislature has also provided that:

The taxpayer shall have **a right to a hearing and determination to show reasonable cause** for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made (*emphasis added*).

In analyzing and reviewing Tenn. Code Ann. § 67-5-1412(e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to

waive these requirements except **where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.** (*emphasis added.*) *Associated Pipeline Contractors Inc.* (Williamson County, Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovetz*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus, for the State Board of Equalization to have jurisdiction to this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Davidson County Board of Equalization. It is the taxpayer's burden to prove that he is entitled to the requested relief.

The taxpayer, Wolfgang Sauerman, stated that he had e-mailed Mr. Roberson about the 3 subject properties. Mr. Roberson testified that he remembered communicating to the taxpayer about the Fairfax property but the other 2 are not within his authority to deal with. The taxpayer alleges that he made a written request for informal reviews on the 3 subject properties. According to the testimony of the county representatives the "usual" process is for the taxpayer to receive a written response to the Informal Review (county's exhibit #1, for the Fairfax property). It then becomes the taxpayer's responsibility to follow the instructions and proceed to the Metro Board of Equalization, if the taxpayer disagrees with the Informal Review results.¹ In the present case it is undisputed that the taxpayer only received information on the Fairfax property. The late filed exhibit #3 by the taxpayer shows that he sent a letter on April 19, 2005, requesting an Informal Review on all 3 parcels that are the subject of this appeal.

On September 13, 2003² [SIC] a letter was sent to Mr. Roberson requesting a status report on the 3 properties. On September 21, 2005³, Mr. Roberson acknowledged receipt of Mr. Sauerman's request for the 2134 Fairfax Avenue and 3451 West End Avenue (not the subject of the appeals). Mr. Sauerman could not explain why he waited until January 25, 2006 to file with the State Board of Equalization. It should also be noted that Mr. Sauerman acknowledged receipt of the Notice of Informal Review for the Fairfax property which clearly states in "bold" letters:

Failure to appeal the assessment to the Metropolitan Board of Equalization may result in the assessment becoming final without further right of appeal.

Mr. Sauerman was put on notice in the administrative judge's opinion that further action was needed on his part. Additionally, Mr. Sauerman worked for Westwood Properties, that deals with "Real Estate Sales/Appraisal/Counseling" he is not a neophyte nor the ordinary inexperienced taxpayer. After reviewing the documentation there is, regrettably, not sufficient reasonable cause to maintain that incidents beyond the taxpayers

¹ It should be noted that a taxpayer has the right to proceed directly to the Metro Board of Equalization without first undergoing an Informal Review.

² The date on the letter is 2003 but the body of the letter reflects it was about the 2005 values.

³ It was noted that the deadline for July with the State Board of Equalization was September 28, 2005.

control prevented the taxpayer from filing with the county or filing in a timely fashion to the State Board of Equalization.

ORDER

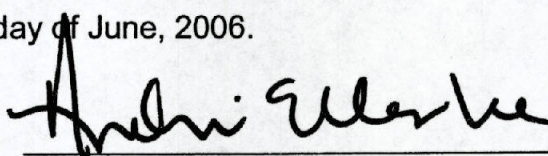
The administrative judge believes that "reasonable cause" does not exist and therefore the taxpayer has not sustained his burden. The State Board of Equalization does not have jurisdiction to hear this appeal. This appeal is Dismissed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 30th day of June, 2006.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Wolfgang Sauerman
Jo Ann North, Assessor of Property

EXHIBIT

<u>Parcel ID</u>	<u>Land Value (\$)</u>	<u>Improvement Value (\$)</u>	<u>Total Value (\$)</u>	<u>Assessment (\$)</u>
Map 129-11-0-A, Parcel 311.00CO	34,000	107,100	141,100	35,275
Map 116-16-0-B, Parcel 36.00CO	90,000	493,300	583,300	145,825
Map 104-11-0-A, Parcel 44.00CO	13,000	52,900	65,900	16,475